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12 UNITED STATES BANKRUPTCY COURT  
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
14 OAKLAND DIVISION

15 In re  
16 I2A TECHNOLOGIES, INC.,  
17 Debtor.

Case No. 14-44239-CN

Chapter 11

**SECURED CREDITOR HERITAGE  
BANK OF COMMERCE'S MOTION TO  
APPROVE JOINT STIPULATION FOR  
RELIEF FROM THE AUTOMATIC  
STAY**

20 Date: January 15, 2015  
21 Time: 10:30 a.m.  
Judge: Hon. Charles Novak  
22 Courtroom: 215

23  
24 Secured Creditor Heritage Bank of Commerce ("HBC") hereby files this motion (the  
25 "Motion") and seeks entry of an order approving the joint Stipulation Granting Secured Creditor  
26 Heritage Bank Of Commerce Relief From The Automatic Stay (the "Stipulation for Relief from  
27 Stay"), entered into by and between Debtor i2a Technologies, Inc. ("Debtor") and HBC  
28 (collectively, the "Parties").

1     **I. BACKGROUND**

2             Before the filing of the petition herein, and as part of its ongoing business operations,  
3     Debtor obtained financing from HBC, (the “Loan”), as set forth in certain financing instruments,  
4     documents, and agreements (collectively, the “Loan Documents”), including the following:

5             1.       That certain Promissory Note (the “i2a Note”), dated December 23, 2010, in the  
6     principal amount of \$1,830,000.00, and the accompanying Business Loan Agreement, also  
7     dated December 23, 2010 (the “Business Loan Agreement”);

8             2.       That certain Commercial Security Agreement dated December 23, 2010 (the  
9     “Security Agreement”), executed by i2a in consideration for HBC’s grant of the i2a Loan and  
10    granting HBC a security interest in, among other personal business property of i2a, all  
11    machinery, equipment and furniture, inventory, accounts, instruments, general intangibles,  
12    chattel paper, all accessions, additions, replacements, and substitutions relating to any of the  
13    foregoing, and all records of any kind relating to the foregoing (including insurance, general  
14    intangibles, and other accounts proceeds);

15            3.       That certain Change In Terms Agreement dated July 15, 2011, changing certain  
16    terms of the Loan; and

17            4.       That certain Change In Terms Agreement dated March 13, 2012, changing  
18    certain terms of the Loan.

19            True and correct copies of the Loan Documents are attached as **Exhibit A** to the  
20    Stipulation for Relief from Stay.

21            The loan obligations of Debtor to HBC as well as the security interests granted pursuant  
22    to the Commercial Security Agreement were duly perfected by HBC filing various UCC-1  
23    Financing Statements with the California Secretary of State. True and correct copies of the  
24    UCC-1 Financing Statements are attached as **Exhibit B** to the Stipulation for Relief from Stay.

25            The Court previously entered an Order approving the Stipulation For Use Of Cash  
26    Collateral And For Adequate Protection Secured By Liens On Property Of The Estate (the “First  
27    Interim Cash Collateral Stipulation”). *See* Dkt. No. 36. However, the First Interim Cash  
28    Collateral Stipulation expired on December 1, 2014. *See* Dkt. No. 19.

Debtor asserts that it will not be able to operate and keep its doors open without the use of HBC's cash collateral, and Debtor requires the continued use of HBC's collateral in order to continue to operate its business. To that end, Debtor and HBC have each agreed and executed (i) the Stipulation for Relief from Stay and; (ii) the Second Stipulation For Use Of Cash Collateral And For Adequate Protection Secured By Liens On Property Of The Estate (the "Second Interim Cash Collateral Stipulation"). See Dkt. Nos. 40-41. Pursuant to the Second Interim Cash Collateral Stipulation, Debtor seeks to use approximately \$111,760.00 of HBC's cash collateral for the month of December 2014, plus such additional cash collateral that will be set forth in subsequent operating budget and cash flow projections. See Dkt. No. 41. Debtor will file a motion to seek approval of the Second Interim Cash Collateral Stipulation, but at this time has not filed such motion. The material provisions of the Stipulation for Relief from Stay are discussed in detail below.

## **II. ARGUMENT**

### **A. Legal Standard**

Federal Rule of Bankruptcy Procedure 4001(d)(1)(A)(iii) provide that a party may file a motion seeking approval of an agreement to modify or terminate the automatic stay provided for under section 362 of the Bankruptcy Code. The motion must contain "a concise statement of the relief requested ... that lists or summarizes, and sets out the location within the relevant documents of, all material provisions of the agreement." Fed. R. Bankr. P. 4001(d)(1)(B). The purpose of Rule 4001(d) is to "protect the interest of the creditor who may be adversely affected by an undisclosed agreement by requiring notice to parties who may have an interest in, or be affected by, such an agreement." *In re Manchester Ctr.*, 123 B.R. 378, 381 (Bankr. C.D. Cal. 1991) (citation omitted).

### **B. Relief Requested**

By this Motion, HBC seeks approval of the terms and conditions set forth in the Stipulation for Relief from Stay entered into by and between Debtor and HBC.

### **C. Material Provisions**

The material provisions of the Stipulation for Relief from Stay are as follows:

1           1.       Debtor shall make adequate protection payments to HBC in an amount not less  
2 than \$8,000.00 per month pursuant to the terms and conditions set for in the Second Interim  
3 Cash Collateral Stipulation. (*See* Dkt. No. 40, ¶ 1).

4           2.       On March 1, 2015, HBC shall be granted complete and immediate relief from the  
5 automatic stay imposed by 11 U.S.C. § 362(a) to exercise all of its rights and remedies under the  
6 Loan Documents with respect to the Personal Property Collateral, unless either:

7                   A.       On or before February 28, 2015, Debtor pays to HBC the then  
8 outstanding balance of the Indebtedness (as defined in the Loan Documents), including all  
9 attorney fees and costs incurred by HBC to enforce its rights under the Loan Documents; or

10                  B.       On or before February 28, 2015, Debtor has duly filed, served, and set for  
11 hearing a motion to approve the sale of assets with net proceeds of sale sufficient to pay to HBC  
12 the then outstanding balance of the Indebtedness (as defined in the Loan Documents), including  
13 all attorney fees and costs incurred by HBC to enforce its rights under the Loan Document.  
14 (*See* Dkt. No. 40, ¶ 2).

15           3.       If HBC is granted relief from the automatic stay, then Asset Reliance  
16 International, LLC or another firm selected by HBC will conduct a commercially reasonable  
17 disposition of the Personal Property Collateral in accordance with the standards set forth in the  
18 California Commercial Code. (*See* Dkt. No. 40, ¶ 2).

19           4.       HBC may seek relief from the automatic stay prior to February 28, 2015, for  
20 cause including for breach by Debtor of provisions of the Second Interim Cash Collateral  
21 Stipulation, and Debtor reserves all rights and argument which may exist to oppose any such  
22 motion for relief from stay. (*See* Dkt. No. 40, ¶ 5).

23           5.       Debtor cannot seek to modify, alter, or change any terms of the Stipulation for  
24 Relief from Stay through a Chapter 11 Plan of Reorganization without the express written  
25 consent of HBC. (*See* Dkt. No. 40, ¶ 6).

26           6.       The Stipulation for Relief from Stay and the Parties' agreement thereto are  
27 conditioned upon approval by the Bankruptcy Court of the Second Interim Cash Collateral  
28 Stipulation. (*See* Dkt. No. 40, ¶ 9).

1 In short, the Stipulation for Relief from Stay and the Second Interim Cash Collateral  
2 Stipulation allow Debtor continued use of HBC's cash collateral for approximately 90 days to  
3 conduct business operations while Debtor seeks new financing or a buyer for its business assets.  
4 In the event that Debtor is unable to obtain timely new financing or a buyer for its business  
5 assets, then HBC will be granted relief from the automatic stay to conduct a commercially  
6 reasonable disposition of its Personal Property Collateral in accordance with the standards set  
7 forth in the California Commercial Code.

8 **III. CONCLUSION**

9 Based on the forgoing, HBC respectfully requests that the Court enter an order granting  
10 this Motion and approving the terms of the Stipulation for Relief Stay entered into by and  
11 between Debtor and HBC.

12  
13 Dated: December 8, 2014

HOPKINS & CARLEY,  
A Law Corporation

14  
15 By: /s/ Stephen J. Kottmeier  
16 Stephen J. Kottmeier  
17 Brent D. Meyer  
18 Attorneys for Secured Creditor  
19 HERITAGE BANK OF COMMERCE  
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